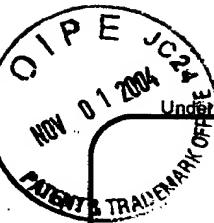


*AF*

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	09/841,402
		Filing Date	April 23, 2001
		First Named Inventor	ROBERT D. KLUSER
		Art Unit	3637
		Examiner Name	Janel Marie Wilkens
Total Number of Pages in This Submission	14	Attorney Docket Number	7201 US

ENCLOSURES (Check all that apply)			
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <input type="checkbox"/> Return Post Card	
<input type="checkbox"/> Remarks			

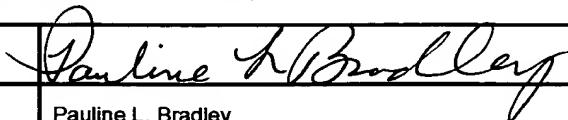
### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	TEKTRONIX, INC.		
Signature			
Printed name	Francis I. Gray		
Date	October 28, 2004	Reg. No.	27,788

### CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature



Typed or printed name

Pauline L. Bradley

Date October 28, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 340.00)

## Complete if Known

Application Number	09/841,402
Filing Date	April 23, 2001
First Named Inventor	ROBERT D. KLUSER
Examiner Name	Janel Marie Wilkens
Art Unit	3637
Attorney Docket No.	7201 US

## METHOD OF PAYMENT (check all that apply)

 Check  Credit card  Money Order  Other  None
 Deposit Account:

Deposit Account Number **20-0352**  
 Deposit Account Name **TEKTRONIX, INC.**

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below  Credit any overpayments  
 Charge any additional fee(s) or any underpayment of fee(s)  
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395	Utility filing fee			
1002 350	2002 175	Design filing fee			
1003 550	2003 275	Plant filing fee			
1004 790	2004 395	Reissue filing fee			
1005 160	2005 80	Provisional filing fee			
<b>SUBTOTAL (1) (\$)</b>					

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			-2** =	X	=
			- 3** =	X	=

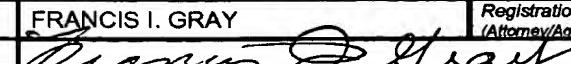
Large Entity	Small Entity	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
<b>SUBTOTAL (2) (\$)</b>		

\*\*or number previously paid, if greater; For Reissues, see above

## 3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath			
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet			
1053 130	1053 130	Non-English specification			
1812 2,520	1812 2,520	For filing a request for ex parte reexamination			
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action			
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action			
1251 110	2251 55	Extension for reply within first month			
1252 430	2252 215	Extension for reply within second month			
1253 980	2253 490	Extension for reply within third month			
1254 1,530	2254 765	Extension for reply within fourth month			
1255 2,080	2255 1,040	Extension for reply within fifth month			
1401 340	2401 170	Notice of Appeal			
1402 340	2402 170	Filing a brief in support of an appeal			340.00
1403 300	2403 150	Request for oral hearing			
1451 1,510	1451 1,510	Petition to institute a public use proceeding			
1452 110	2452 55	Petition to revive - unavoidable			
1453 1,370	2453 685	Petition to revive - unintentional			
1501 1,370	2501 685	Utility issue fee (or reissue)			
1502 490	2502 245	Design issue fee			
1503 660	2503 330	Plant issue fee			
1460 130	1460 130	Petitions to the Commissioner			
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)			
1806 180	1806 180	Submission of Information Disclosure Stmt			
8021 40	8021 40	Recording each patent assignment per property (times number of properties)			
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))			
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))			
1801 790	2801 395	Request for Continued Examination (RCE)			
1802 900	1802 900	Request for expedited examination of a design application			
Other fee (specify) _____					
*Reduced by Basic Filing Fee Paid				<b>SUBTOTAL (3) (\$)</b>	340.00

(Complete if applicable)

Name (Print/Type)	FRANCIS I. GRAY	Registration No. (Attorney/Agent)	27,788	Telephone	503 627-7261
Signature				Date	October 28, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: **ROBERT D. KLUSER and WARREN L. POWERS**

Filed: **April 23, 2001**

Examiner: **Janet Marie Wilkens**

Serial No.: **09/841,402**

Art Unit: **3637**

For: **MODULAR RACK MOUNTING SYSTEM**

October 28, 2004

Mail Stop Appeal Brief - Patents  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF**

Dear Sir:

This is an appeal from the rejection of the Examiner dated July 12, 2004 finally rejecting claims 1-5 and 4/8.

**Real Party in Interest**

Appellants' assignee, Tektronix, Inc., an Oregon corporation, is the real party in interest for this case.

**Related Appeals and Interferences**

There are no other appeals or interferences known to Appellants, Appellants' legal representatives or Appellants' assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

01 FC:1402  
11/02/2004 CHAUVEN 00000007 200352  
340.00 DA

**Status of Claims**

Claims 1-5, 7 and 8 are pending in the present appeal, with claim 6 having been canceled and replaced by claim 8. Claims 7, 5/8 and 7/8 are objected to as depending from a rejected base claim. The appealed claims are claims 1-5 and 4/8.

**Status of Amendments**

The amendment of August 23, 2004, filed by Appellants subsequent to the final rejection by the Examiner, has been entered by the Examiner.

**Summary of the Invention**

The present invention relates to a modular rack mounting system that is flexible for mounting instruments having different environmental requirements in an instrument rack. Prior rack mounting systems have had a "one size fits all" characteristic that are sized to fit either into a full rack or into a half rack by providing sleeves for the full rack that are half-rack size and are welded together. The sleeves are all standard and have ventilation holes that do not necessarily conform to all instrument environmental requirements. (Fig. 1; page 1, lines 5-23) This results in the requirement of an innumerable number of rack mounting systems to accommodate all environmental requirements. (Page 1, line 24 - page 2, line 1)

As shown in Fig. 2 the present invention has a central frame 12 suitable for mounting on an instrument rack that is formed from two portions 18, 20 that are

welded together to form a central compartment. A central rib 22 may be used to divide the central compartment into two compartments. One or more detachable sleeves 14, 16 within which an instrument may be mounted are configured to fit within the central compartment or into either of the two compartments defined by the rib. The sleeves are detachably secured to the frame, such as by holes 26 in the sleeves that engage snap and latch systems 28 mounted on the inside of the frame and/or the central rib. The sleeves slide into the respective compartments and the snap and latch systems include a button 30 that engages the hole in the sleeve to secure the sleeve in the frame. The button may be depressed from the interior of the sleeve to detach the sleeve from the frame. (Page 3, line 15 - page 4, line 10) The button may be mounted on a spring 48 to allow for such detachable snap and latch action. (Page 4, lines 18-22) The open nature of the frame together with the sleeves being adapted to conform to the particular environmental requirements of the instruments to be placed within them results in the desired flexible modular rack-mounting system.

**Issues**

(1) 35 U.S.C. 102(b):

Whether claim 1 is anticipated by Rodriguez (U.S. Patent No. 5,138,525)?

(2) 35 U.S.C. 103(a):

(i) Whether claim 4 is unpatentable over Rodriguez.

(ii) Whether claims 2, 5 and 4/8 are unpatentable over Rodriguez in view of Noda et al ("Noda" U.S. Patent No. 4,688,131) and Ryan et al ("Ryan" U.S. Patent No. 5,587,877)?

**Grouping of Claims**

Claims 1, 2, 4, 5 and 4/8 are deemed to be separately patentable, and claim 3 is deemed to stand or fall together with claim 1.

**Argument**

1. 35 U.S.C. 102(b)

35 U.S.C. 102(b) in pertinent part provides that “[A] person shall be entitled to a patent unless . . . the invention was patented . . . in this or a foreign country . . . more than one year prior to the date of the application for patent in the United States.” This has been interpreted to mean that all the elements of a claim, in order to be anticipated under this Section, must be contained within the four corners of a single prior art patent. (*Walker v. General Motors Corporation*, 362 F.2d 56, 58, 149 USPQ 472, 473-474 (9<sup>th</sup> Cir. 1966))

Rodriguez discloses a digital computer chassis or computer unit 20, rather than a modular rack-mounting system as recited by Appellants, which uses a strut 15 (not a rib) between front and rear walls 17, 18 to provide structural rigidity and a conductor conduit 16. The strut also provides a point of attachment and support for a power supply 22 and a hard disk drive 21. (Column 2, lines 8-11) The computer chassis is not designed for mounting on an instrument rack, but rather is designed to be a self-contained unit. Also the structure of front and rear walls on a chassis (bottom) with a strut between them do not form a compartment – one of the parts into which an enclosed space is divided -- without also including a cover 26 to provide a top and side walls. Note that with the cover a sleeve a has no control over

the environmental requirements of anything (disk drives 25) inserted therein, i.e., there is no environmental flexibility. The sleeve shown may be secured to the bottom of the chassis by what appears to be a tongue **c** in the bottom of the chassis that interacts with a hole **b** in the sleeve prior to putting the cover on. Such an arrangement does not appear to be readily detachable, but rather appears to be permanent.

Claim 1 recites a frame suitable for mounting on an instrument rack, which frame has a central compartment with a top, bottom and two sides. The Examiner equates this configuration to the entire inside of the computer unit. The computer unit has not only top, bottom and two sides, but also front and rear ends. Appellants submit that Rodriguez at best provides a structure having the front wall, rear wall and bottom with the strut, that incidentally divides the structure into two open regions, for rigidity. No compartment, i.e., enclosed space, is formed until the cover is put in place to complete the computer unit, at which time it is not possible to insert the sleeve into the "compartment." In Rodriguez the sleeve has to be mounted to the bottom of the chassis prior to the cover being put on, i.e., before any "compartment" exists. Therefore Rodriguez does not teach or suggest the "frame" as recited by Appellants.

Claim 1 further recites a sleeve within which an instrument may be mounted, which sleeve is configured to be inserted and fit within the central compartment. The sleeve of Rodriguez does reside within the "compartment" formed by the cover between the front wall and the power supply, but it is not insertable into the compartment as described above because it cannot be mounted once the cover is on to form the compartment.

Finally claim 1 recites means for detachably securing the sleeve within the compartment. Appellants submit, as discussed above, that the sleeve is not

“detachably” secured, rather than the sleeve is permanently secured. Therefore claim 1 is deemed not to be anticipated by Rodriguez because Rodriguez does not disclose all the elements together in the same way to perform the identical function as recited in claim 1.

2. 35 U.S.C. 103(a)

35 U.S.C. 103(a) recites in pertinent part that “[A] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which such subject matter pertains.” Under this Section “the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” (*Graham v. John Deere Co. of Kansas City*, 383 US 1, 148 USPQ 459, 467 (1966)) In order for it to be obvious to combine references to produce the claimed invention, there must be some teaching or suggestion in the references that would lead one of ordinary skill in the art to make such a combination. (*Ex parte Shepard et al*, 188 USPQ 536 (1974))

(i) With respect to claim 4 a rib is recited, not a strut as in Rodriguez. The recited rib, as shown in Fig. 2, is comparable to a rib defined as “a light fore-and-aft member in an airplane wing.” The purpose of the rib in Appellants’ claim is to separate a single compartment “into two equal compartments.” The purpose of the

strut of Rodriguez is merely to provide structural rigidity. Therefore, since the strut of Rodriguez serves a different function and is not in fact a rib, it is not equivalent to the rib recited by Appellants. Thus claim 4 is deemed to be patentable as being nonobvious over Rodriguez.

(ii) With respect to claims 2, 5 and 4/8 the Examiner states that Rodriguez fails to teach that the securing means is specifically a spring and button member, but that Noda teaches a securing means having a spring **88** mounted on a frame **24** and a button **94** mounted on the spring and extending through holes in the frame and sleeve **22**. Further the Examiner states that, assuming that the base of the frame in Rodriguez is flush with a support surface, a "fake bottom" **16** as taught by Ryan could be employed to allow the spring to flex; and when the components are removed from the sleeve, the buttons may be depressed from within the sleeve.

The first question to be answered is whether the teachings of Noda suggest to one of ordinary skill in the art the replacement of the tongue and hole securement means of Rodriguez with the spring and pawl mechanism of Noda. Is such a combination reasonably possible, and would it produce Appellants' claimed invention? Noda discloses a locking means that permits ready detachment of a magnetic disk assembly **22** from a disk drive compartment **32** within a housing **24**. The disk drive assembly has its own enclosure **34** with an entrance slot **40** for insertion of a disk cartridge **42**. The locking mechanism includes a cantilever spring **88** having a locking lever **86** at the free end with a pawl **94** that extends through first holes **96** in the compartment wall to engage corresponding holes **46** in the disk assembly. To detach the disk assembly a separate retraction mechanism **106** is

inserted into the entrance slot. The retraction mechanism has tripping levers 114 with tips 104 that may be extended through second holes 98 in the compartment wall to push the lock lever to lift the pawls out of the first holes so the disk assembly may be withdrawn. The pawl is not what is depressed, but rather the locking lever.

To combine Noda with Rodriguez would be to replace the tongue and hole arrangement of Rodriguez with the locking means of Noda, i.e., the locking means of Noda would be incorporated into the bottom of Rodriguez in lieu of the tongue and hole arrangement. Noda teaches the locking mechanism as being in the opposing side walls of the compartment (which do not exist in Rodriguez even with the cover on, as the “side” away from the cover is open), and not in the bottom or only one wall.

Claims 2 and 4/8 recite a spring mounted on a frame with a button that extends through a hole in the frame to engage a corresponding hole in the sleeve. These claims further recite that the button is accessible so that the button – not the lever arm upon which the button is mounted as in Noda – may be depressed from the interior of the sleeve to readily remove it from the frame. Therefore Noda does not teach or suggest that the pawl is depressed to remove the sleeve, but rather the intermediary element between the spring and the pawl is depressed via a secondary hole in the frame. Thus claims 2 and 4/8 are deemed to be allowable as reciting a configuration that is not taught or suggested by Noda.

Claim 5 recites that an inner spring is mounted on the central rib. The strut of Rodriguez is not a “rib” that divides a compartment into two compartments as its purpose is for structural rigidity, not compartment division, as discussed above. Further there is no way that a securing mechanism could be mounted on such strut

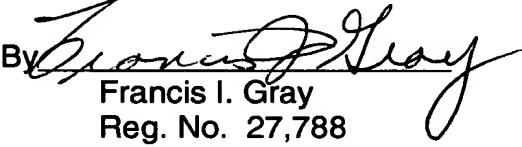
– certainly not the locking mechanism of Noda. Therefore the combination of Noda with Rodriguez does not produce the invention as recited in claim 5, and Appellants submit that claim 5 is patentable over Rodriguez in view of Noda and Ryan.

**Conclusion**

In view of the foregoing arguments Appellants submit that claims 1-5 and 4/8 are neither anticipated nor rendered obvious by Rodriguez, either alone or in combination with Noda, Ryan and/or Russo. Therefore Appellants request that the Examiner's rejection be reversed, and that this case be passed to issue.

Respectfully submitted,

ROBERT D. KLUSER et al

By   
Francis I. Gray  
Reg. No. 27,788  
Attorney for Applicant

TEKTRONIX, INC.  
P.O. Box 500 (50-LAW)  
Beaverton, OR 97077  
(503) 627-7261

7201 US

**Appealed Claims**

1. A modular rack-mounting system comprising:

5                   a frame suitable for mounting on an instrument rack, the frame forming  
a central compartment having a top, a bottom and two sides;  
                  a sleeve within which an instrument may be mounted, the sleeve being  
configured to be inserted and fit within the central compartment; and  
                  means for detachably securing the sleeve within the central  
compartiment.

10

2. The modular rack-mounting system as recited in claim 1 wherein the  
securing means comprises:

15                   a spring mounted on the frame;  
                  a button mounted on the spring and extending through a hole in the  
frame into the central compartment to engage a corresponding hole in the  
sleeve when the sleeve is inserted within the central compartment, the button  
being accessible from the interior of the sleeve so that, when the button is  
depressed from the interior of the sleeve, the sleeve may be readily removed  
from the central compartment.

20

3. The modular rack-mounting system as recited in claim 1 wherein the frame  
comprises:

25                   a left portion having fingers; and  
                  a right portion having fingers, the fingers of the left and right portions  
interlocking with each other to assure rigidity of the frame.

4. The modular rack-mounting system as recited in claim 1 further comprising a central rib mounted within the frame to form a central wall that divides the central compartment into two equal compartments, the sleeve being configured to fit within either compartment.

5

5. The modular rack-mounting system as recited in claim 4 wherein the securing means comprises:

an inner spring mounted on the central rib;

a button mounted on the inner spring to engage a hole in the sleeve

10 when the sleeve is inserted into one of the two compartments, the button being accessible from the interior of the sleeve so that, when the button is depressed from the interior of the sleeve, the sleeve may be readily removed from the one compartment.

15 7. The modular rack-mounting system as recited in claim 4 wherein the securing means comprises:

a first inner spring mounted on a first side of the central rib having a first button mounted on one end; and

20 a second inner spring mounted on a second side of the central rib in an opposing manner to the first inner spring and having a second button mounted on one end, the first and second buttons being mounted to engage corresponding holes in respective sleeves when the respective sleeves are inserted into the two compartments, the central rib having a rib hole between the button ends of the first and second inner springs to allow the button ends 25 to deform into the rib hole when the buttons are depressed for removing the sleeves from the compartments.

8. The modular rack-mounting system as recited in claims 4, 5 or 7 wherein the securing means comprises:

an outer spring mounted on the frame;  
a button mounted on the outer spring and extending through a hole in  
5 the frame into one of the two compartments to engage a corresponding hole  
in the sleeve when the sleeve is inserted within the one compartment.